

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)
***ex rel.* DONNA L. WILSON, AS**)
APPOINTED ASSISTANT RECEIVER FOR)
UNION MUTUAL INSURANCE)
COMPANY)

Plaintiff,)

vs.)

AXIOM RE, LP, AXIOM RE, INC.)
BROWN & BROWN, INC., BEACH RE,)
LIMITED, BMS INTERMEDIARIES, INC.)
(a/k/a BMS Re US), BMS INTERMEDIARIES)
LTD., and BMS GROUP, LTD)

Defendants.)

Case No. CIV-17-484-HE
Removed from Oklahoma County
Case No. CJ-2017-1294

DEFENDANTS' NOTICE OF REMOVAL

Defendants Axiom Re, LP, Axiom Re, Inc. and Brown & Brown, Inc. (collectively the “Axiom Defendants”), by their attorneys, hereby provide Notice to this Court of the Removal to this Court of the above cause of action from the District Court of Oklahoma County, State of Oklahoma pursuant to 28 U.S.C. §§ 1441(a) and 1446. In support of their Notice of Removal, the Brown & Brown Defendants state as follows:

Timely Removal

1. On March 3, 2017, Plaintiff, the State of Oklahoma, *ex rel* Donna L. Wilson as Appointed Assistant Receiver by John Doak, Insurance Commissioner, as Receiver for Union Mutual Insurance Company (“Plaintiff”) filed a complaint in the District Court of Oklahoma County, State of Oklahoma asserting state law claims of negligent misrepresentation and negligence. The case is pending in state court as Case No. CJ-2017-1294.

2. Plaintiff claims to have delivered the complaint and summons via certified mail to Axiom Re, LP on April 6, 2017 and Brown & Brown, Inc. on April 10, 2017. The Axiom Defendants reserve the right to challenge service as improper.

3. Pursuant to 28 U.S.C. § 1446(a), a complete copy of all process and pleadings received by Defendants is attached as Exhibit A.

4. Defendants have not filed any pleadings or appearances in state court.

5. This Notice of Removal is timely under § 1446(b)(1). Defendants filed this Notice of Removal on April 26, 2017, which is within 30 days from the delivery and purported service of the complaint on April 6, 2017 and April 10, 2017.

6. This removal is based on diversity jurisdiction under 28 U.S.C. § 1332. Diversity jurisdiction requires the parties to be citizens of different states and the amount in controversy exceed \$75,000.

Diversity of Citizenship

7. Union Mutual Insurance Company is an Oklahoma domestic mutual insurer licensed to transact insurance under the laws of the State of Oklahoma. It is currently in Receivership under the regulation of John Doak, Commissioner of Insurance for the State of Oklahoma and under the supervision of the District Court in and for Oklahoma County, State of Oklahoma. Ex. A, Complaint ¶1. Donna L. Wilson has been appointed as Assistant Receiver with authority to carry out the Receivership of UMIC. Ex. A, Complaint ¶2. UMIC and the Receivership are citizens of Oklahoma. 28 U.S.C. § 1332(c).

8. Axiom Re, LP is a Florida limited partnership with its principal place of business in North Carolina. Ex. A, Complaint ¶4. Axiom Re, LP is a citizen of Florida and North Carolina. 28 U.S.C. § 1332(c).

9. Axiom Re, Inc. is a Florida corporation with its principal place of business in North Carolina. Ex. A, Complaint ¶5. Axiom Re, Inc. is a citizen of Florida and North Carolina. 28 U.S.C. § 1332(c).

10. Brown & Brown, Inc. is a Florida corporation with its principal place of business in Florida. Ex. A, Complaint ¶6. Brown & Brown is a citizen of Florida. 28 U.S.C. § 1332(c).

11. Plaintiff alleges that Beach Re, Limited is a Delaware corporation with its principal place of business in North Carolina. Ex. A, Complaint ¶7. Beach Re, Limited is a citizen of Delaware and North Carolina. 28 U.S.C. § 1332(c).

12. Plaintiff alleges that BMS Intermediaries, Inc. is a Texas corporation with its principal place of business in Minnesota. Ex. A, Complaint ¶8. BMS Intermediaries, Inc. is a citizen of Texas and Minnesota. 28 U.S.C. § 1332(c).

13. Plaintiff alleges that BMS Intermediaries, Ltd. is incorporated in Great Britain and has its principal place of business in London England. Ex. A, Complaint ¶9. BMS Intermediaries, Ltd. is a citizen of England. 28 U.S.C. § 1332(c).

14. Plaintiff alleges that BMS Group, Ltd is incorporated in Great Britain and has its principal place of business in London England. Ex. A, Complaint ¶10. BMS Group, Ltd. is a citizen of England. 28 U.S.C. § 1332(c).

15. Plaintiff and Defendants are not citizens of the same state and there is complete diversity among the parties to support removal under 28 U.S.C. § 1441(a). *See* 28 U.S.C. § 1332(c). Removal is also proper under 28 U.S.C. § 1441(b)(2) because none of the Defendants is a citizen of Oklahoma.

Amount in Controversy

16. Jurisdiction is proper in diversity cases where the amount in controversy exceeds \$75,000.

17. Plaintiff seeks damages in excess of \$75,000. Ex. A, Complaint ¶¶ 40, 45. Plaintiff also admits that it seeks damages in amount that exceeds the amount required for diversity jurisdiction under 28 U.S.C. § 1332(c). Ex. A, Complaint ¶¶ 40, 45.

18. Thus, the amount in controversy requirement is met.

Reservation of Rights

19. The Axiom Defendants' filing of this Notice of Removal is not intended, nor should be construed, as any type of admission by the Axiom Defendants of any fact or validity of the merits of any of Plaintiff's claims or allegations, or concession or consent to jurisdiction. The Axiom Defendants do not waive any right or objection through this Notice of Removal, and specifically reserves the right to object to service and personal jurisdiction.

20. A copy of this Notice of Removal is being filed with the District Court of Oklahoma County, State of Oklahoma on the date of this Notice.

21. The Axiom Defendants agree that this matter should be removed to federal court and all join, through counsel, in this notice of removal.

22. Counsel for the Axiom Defendants has spoken with counsel with Beach Re and Beach Re consents to removal of this action.

23. Counsel for the Axiom Defendants has spoken with counsel for BMS Intermediaries, Inc., BMS Intermediaries Ltd., and BMS Group, Ltd. and those defendants also consent to removal of this action.

WHEREFORE, Defendants pray that this matter be removed from the District Court of Oklahoma County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma.

Respectfully submitted,

BEST & SHARP

s/Todd M. Wagner

Sean H. McKee, OBA #14277

Todd M. Wagner, OBA #30278

One West Third Street, Suite 900

Tulsa, OK 74103

918-582-1234

918-585-9447 (Facsimile)

smckee@bestsharp.com

twagner@bestsharp.com

*Attorneys for Defendants, Axiom RE, LP,
Axiom RE, Inc., and Brown & Brown, Inc.*

CERTIFICATE OF MAILING

I hereby certify that on the 26th day of April, 2017, I mailed the above and foregoing instrument, via First Class Mail, postage prepaid, to:

George E. Gibbs

George R. Mullican

Jamie A. Rogers

Gibbs Armstrong Borochoff

Mullican & Hart, PC

601 S. Boulder Ave., Suite 500

Tulsa, OK 74119

918-587-3939

918-582-5504 Facsimile

Attorneys for Plaintiff

s/Todd M. Wagner